

## Chapter 23

# **Funding a Library Building Project**<sup>\*</sup>

A library building project does not have to be a painful experience. There will be anxious moments in every project, such as the minutes before construction bids are opened. There will also be times when it appears that the legal process takes forever to complete. But with proper planning, good and open communication and the assistance of qualified, experienced professionals, the process and the end result can be very rewarding.

There are two types of bonds that libraries can use to fund a building project:

- a. General obligation bonds, and
- b. Lease financing (a.k.a. Building Corporation or Holding Corporation bonds)

**House Enrolled Act 1001 requires that before any debt (whether general obligation bonds or leases) can be issued by a non-elected library board, the library must obtain the approval of a specific elected entity. (IC 6-1.1-17-20.5)**

**This approving body will either be the county council or the city/town council depending on the library district. If the library district is coterminous with a city or town or was originally created by a city or town, then the approving entity will be the city or town council. However, if the library district expands beyond the city or town or the library was originally created by a township or the county, then the approving entity will be the county council.**

**This approval must be obtained prior to issuing the bonds; however the timing of this approval is otherwise up to the library. It is political decision whether the Board requests this approval before or after the petition remonstrance process or referendum. Discuss this issue with your library counsel and bond counsel.**

### **General obligation bonds**

General Obligation Bonds are limited in principal amount to one third (1/3) of two percent (2%) of the assessed valuation of the library taxing district – State Constitutional debt limitation

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<sup>\*</sup> The material in this chapter is intended for general information purposes only and does not constitute legal advice. The library board should consult financial counsel, bond counsel, or local legal counsel to determine how laws apply to specific situations.

## **Lease financing**

With a lease financing, a separate not-for-profit corporation is formed using patrons in your community. This building or holding corporation issues the bonds which finance the construction of the library building and leases the facility back to the library for a predetermined number of years, usually 20 years. Once the bonds are paid off, the Building Corporation transfers title to the building back to the library.

Many libraries in Indiana, due to the cost of the building, use the lease method of financing. Lease financing allows for a library building project to exceed the maximum constitutional debt limitation placed on the general obligation bond. In library districts where the assessed valuation does not raise enough money for a project, the library would need to use the lease financing method of obtaining bonds.

### **A. Outline of Procedures for the Preliminary Determination Process for financing a Controlled Project**

#### **1. Controlled Project (IC 6-1.1-20-1.1):**

A controlled project is defined as a construction project for which the total project cost is at least \$1,000,000 and exceeds the lesser of: i) 1% of the total gross assessed valuation of the library district or ii) \$2,000,000. The controlled project definition applies to a project if some portion of the project is financed, whether by general obligation bonds or a lease financing.

If the project is non-controlled because it does not meet the above test, no other process is required which permits taxpayers or voters to stop the project through petition/remonstrance or referendum. The library will still need to follow the lease or general obligation bond process, as applicable.

#### **2. Petition/Remonstrance Process (IC 6-1.1-20-3.1):**

If the library's Controlled Project is equal to or less than the lesser of (a) 1% of the total gross assessed valuation of the library district or \$12,000,000 per building, the library will need to follow the process which will permit the taxpayers or voters to request of petition/remonstrance process.

The following steps should be followed if the petition/remonstrance process applies to the Controlled Project:

- a. Publish and mail notice of hearing on a preliminary determination to issue bonds. IC 6-1.1-20-3.1 (*10 day notice*)
- b. Meeting of Board of Trustees to hold hearing and adopt resolution making a preliminary determination to issue bonds or enter into a lease, as applicable. (*Note that this resolution establishes the maximum financing terms*)
- c. Publish and mail notice of preliminary determination to issue bonds. IC 6-1.1-20-3.1 and IC 5-3-1 (*begins 30 day application period in which 100 voters and taxpayers may request that the petition/remonstrance process apply to the project*)
- d. If a petition requesting petition/remonstrance process is filed, proceed with next step; if not, skip to steps for general obligation bonds or leases, as applicable.
- e. Certification by the Voter Registration Office/County Auditor of the number of signers requesting application of petition/remonstrance process who are owners of real property or voters within the library district. IC 6-1.1-20-3.1 (*the lesser of 100 people or 5% of the property tax owners or voters filing a petition can force a petition/remonstrance race*)
- f. Publish and mail notice of the applicability of the petition/remonstrance process. IC 6-1.1-20-3.2 (*publication date determines timing of race*)
- g. Race period occurs beginning from the 30<sup>th</sup> day ending on the 60<sup>th</sup> day (*a thirty day period*) after notice of application is published, during which taxpayers and voters circulate petitions in favor of bonds and remonstrances against bonds (*simultaneously*) (*whichever side gets the most valid signatures of taxpayers and voters, wins*).
- h. Certification by the Voter Registration Office/County Auditor of the number of signers of each who are owners of real property or voters within the library district. If the Library wins it moves on to general obligation bond or lease steps, as applicable. If the Library loses, it may not hold a new preliminary determination hearing for one year on a substantially similar project.

*This information was printed in "Financing Your Library Construction Project: A Summary of Procedures" by Ice Miller, LLP (2008- update).*

### **3. Referendum Process (IC 6-1.1-20-3.5):**

If the library's Controlled Project exceeds the lesser of (a) 1% of the total gross assessed valuation of the library district or \$12,000,000 per building, the library will need to follow the process which will permit the taxpayers or voters to request the referendum process.

The following steps should be followed if the referendum process applies to the Controlled Project:

- a. Publish and mail notice of hearing on a preliminary determination to issue bonds. IC 6-1.1-20-3.5 (*10 day notice*)
- b. Meeting of Board of Trustees to hold hearing and adopt resolution making a preliminary determination to issue bonds or enter into a lease, as applicable. (*Note that this resolution establishes the maximum financing terms*).
- c. Publish and mail notice of preliminary determination to issue bonds. IC 6-1.1-20-3.5 and IC 5-3-1 (*begins 30 days application period in which 100 voters and taxpayers may request that the referendum apply to the project*).
- d. If a petition requesting referendum process is filed, proceed with next step; if not, skip to steps for general obligation bonds or leases, as applicable.
- e. Certification by the Voter Registration Office/County Auditor of the number of signers requesting application of referendum who are owners of real property or voters within the library district. IC 6-1.1-20-3.5 (*the lesser of 100 people or 5% of the property tax owners or voters filing a petition can force a referendum*)
- f. Library files with the County Auditor and the Voter Registration Office certification and request for the referendum
- g. County Auditor certifies the question to the County Election Board which either puts the question on the ballot of a general, municipal or primary election or schedules a special election as requested by the Library and dictated by the timing of the next scheduled election.

- h. If there is a scheduled election within six months of the certification of the question by the Auditor, the project is placed on the ballot of the scheduled election. Otherwise the question will be placed on the ballot of a special election. The special election must be held not sooner than 90 days nor later than 120 days after the question is certified by the County Auditor.
- i. Certification of the election results. If the Library wins, it moves on to general obligation bond or lease steps, as applicable. If the Library loses, it may not hold a new preliminary determination hearing for one year on a substantially similar project.

## **B. Outline of Procedures for the Issuance of Library General Obligation Bonds**

If the Library's project is a Controlled Project it should have completed the petition/remonstrance or referendum process as outlined above before proceeding with the general obligation bond steps.

**Remember that a Library must obtain the approval of the County Council or City/Town Council prior to issuing bonds (IC 6-1.1-17-20.5). This step needs to be inserted in the outline and timetables at the point most strategically advantageous for the library.**

1. Meeting of Board of Trustees to adopt the bond resolution. IC 6-1.1-20-9.
2. Publish notice of hearing on appropriation of bond proceeds. *(publish twice, on week apart; first publication at least 10 days prior to hearing)*
3. Meeting of Board of Trustees to hold hearing on appropriation of bond proceeds and adopt appropriation resolution. IC 6-1.1-18-5
4. A copy of the additional appropriation proceedings is certified by the secretary to the Department of Government Finance.
5. Publication of the bond sale notice in accordance with IC 5-1-11 and 5-3-1. In order to obtain the best bids, it is recommended that the bond sale notice also be published in The Court & Commercial Record, 431 N. Pennsylvania,

Indianapolis, Indiana 46204. If the bonds are to be rated, the rating should be applied for by this time.

6. If the bond issue is over \$1,000,000, an official statement should be prepared by this time to distribute to the potential purchasers. It is appropriate to arrange for the printing of the bonds at this time.
7. Meeting of Board of Trustees to receive and award the bids for the bonds. The dealers who bid on bonds recommend that the bond sale be scheduled near the middle of the day on a Tuesday, Wednesday or Thursday which is not a day before or after a holiday.
8. Bond counsel prepares final transcript certificates and bonds. Submit transcript to bond counsel for approval. Check with registrar and paying agent, bond counsel and purchaser to determine when bonds will be ready for delivery. Schedule delivery of bonds with purchaser, bond counsel and registrar and paying agent.
9. Delivery of and payment for bonds -- the closing.

**C. General Obligation Bonds for Controlled Project Proposed Timetable --  
Petition/Remonstrance Process**

**\*\*IF PETITION/REMONSTRANCE RACE APPLIES TO PROJECT\*\***

Day 1	Publish and mail notice of preliminary determination hearing
Day 11	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution and preliminary bond resolution
Day 13	Post, publish and mail notice of preliminary determination to issue bonds ( <i>first publication</i> )
Day 20	Publish notice of preliminary determination to issue bonds ( <i>second publication</i> )
Day 43	End of application period -- Petition for application of petition and remonstrance process is filed with Voter Registration Office/County Auditor
Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting application of petition and remonstrance process

*This information was printed in "Financing Your Library Construction Project: A Summary of Procedures" by Ice Miller, LLP (2008- update).*

Day 59	Publish and mail notice of applicability of petition and remonstrance process
Day 88	Voter Registration Office issues petition and remonstrance forms -- beginning of petition and remonstrance circulation
Day 119	End of petition and remonstrance period -- file petitions and remonstrances with Voter Registration Office/County Auditor
Day 134	Voter Registration Office/Auditor certifies taxpayer signatures on petitions and remonstrances to Board of Trustees
Day 135	Board of Trustees meeting to receive Auditor's certificate with petitions and remonstrances; if petition in favor wins, adopt final bond resolution
Day 135	Publish notice of additional appropriation hearing
Day 140	City/Town Council or County Council meeting to approve bond issue
Day 146	Board of Trustees meeting to hold hearing on additional appropriation
Day 147	Publish bond sale notice ( <i>first publication</i> )
Day 154	Publish bond sale notice ( <i>second publication</i> )
Day 161	Bond sale
Day 175	Closing -- deliver bonds and receive money

**D. General Obligation Bonds for Controlled Project Proposed Timetable -- Referendum Process Applies**

**\*\*IF REFERENDUM APPLIES TO PROJECT\*\***

Day 1	Publish and mail notice of preliminary determination hearing
Day 11	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution and preliminary bond resolution
Day 13	Post, publish and mail notice of preliminary determination to issue bonds ( <i>first publication</i> )
Day 20	Publish notice of preliminary determination to issue bonds ( <i>second publication</i> )
Day 43	End of application period -- Petition for application for referendum is filed with Voter Registration Office/County Auditor

*This information was printed in "Financing Your Library Construction Project: A Summary of Procedures" by Ice Miller, LLP (2008- update).*

Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting application of referendum
Day 65	Library files Certification of Voter Registration Office and letter requesting question be placed on ballot with County Auditor
Day 79	County Auditor certifies question to County Election Board
Day 109	County Election Board places question on ballot of next scheduled election, or if no scheduled election within next six months, special election scheduled. Special election to occur no sooner than 90 days nor later than 120 days after Auditor certifies the question
Day 200	Election
Day 207	Board of Trustees meeting to receive election results; if win, adopt final bond resolution
Day 210	Publish notice of additional appropriation hearing
Day 215	City/Town Council or County Council meeting to approve bond issue
Day 220	Board of Trustees meeting to hold hearing on additional appropriation
Day 224	Publish bond sale notice ( <i>first publication</i> )
Day 231	Publish bond sale notice ( <i>second publication</i> )
Day 238	Bond sale
Day 252	Closing -- deliver bonds and receive money

**E. General Obligation Bonds for Controlled Project Proposed Timetable**

**\*\*IF NO REQUEST FOR APPLICATION OF PETITION & REMONSTRANCE or REFERENDUM PROCESS\*\***

Day 1	Publish and mail notice of preliminary determination hearing
Day 11	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 13	Post, publish and mail notice of preliminary determination to issue bonds ( <i>first publication</i> )
Day 20	Publish notice of preliminary determination to issue bonds ( <i>second publication</i> )
Day 43	End of period to request application of petition and remonstrance process

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Day 44	Publish notice of additional appropriation hearing
Day 50	City/Town Council or County Council meeting to approve bond issue
Day 54	Board of Trustees meeting to hold hearing on additional appropriation and adopt final bond resolution
Day 55	Publish bond sale notice ( <i>first publication</i> )
Day 62	Publish bond sale notice ( <i>second publication</i> )
Day 69	Bond sale
Day 83	Closing—deliver bonds and receive money

**F. General Obligation Bonds for Non-controlled Project Proposed Timetable**

Day 1	Board of Trustees meeting to adopt bond resolution
Day 2	Publish and post notice of additional appropriation hearing ( <i>first publication</i> )
Day 9	Publish notice of additional appropriation hearing ( <i>second publication</i> )
Day 10	City/Town Council or County Council meeting to approve bond issue
Day 14	Board of Trustees meeting to hold hearing on additional appropriation
Day 15	Publish bond sale notice ( <i>first publication</i> )
Day 22	Publish bond sale notice ( <i>second publication</i> )
Day 29	Bond sale
Day 44	Closing -- deliver bonds and receive money

**G. Library Lease Financings Under IC 36-1-10 for Controlled Project**

**Basics**

- A library is limited to borrowing directly one-third of its net assessed valuation times two percent. Previously, the formula was 2% of its net assessed valuation. However, after the tripling effect of the change to a market value system the General Assembly requires a governmental entity to divide by three before applying the 2% to arrive at the debt limitation. If the cost of the building project and financing will put the library over its debt limitation, a lease financing is used to fund the project.
- The library

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- deeds the real estate on which the building is to be built, or in the case of a renovation project, the building to be improved, to the building corporation;
- the building corporation issues its first mortgage bonds to finance the cost of construction;
- the building corporation leases the building to the library; and
- the library pays lease rental to the building corporation in an amount which matches the debt service payments on the building corporation's bonds

## Procedures

- An architect should be hired and begin to prepare plans and specifications
- The taxpayers have two different mechanisms to oppose projects: the petition/remonstrance process and the referendum process. Which process applies is determined by the size of the project and library's assessed valuation. See discussion above. One or the other applies but not both.
  - Petition/remonstrance process
    - The board of trustees holds hearing following notice and after meeting publishes notice of determination to enter into lease
    - 100 owners of real property or voters may within 30 days petition for application of petition/remonstrance process to project
    - If valid petition is filed, notice that the petition/remonstrance process has been requested is published and mailed
    - Petitions in favor of project and remonstrances against project are circulated concurrently between 30 and 60 days after publication of notice that petition/remonstrance process has been requested
    - If more taxpayers or voters oppose project than support project, it may not be pursued for one year
  - Referendum process
    - The board of trustees holds hearing following notice and after meeting publishes notice of determination to enter into lease

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- 100 owners of real property or voters may within 30 days petition for application of the referendum
  - Election is held; If more voters oppose project than support project, it may not be pursued for one year
- The library which desires to lease a building must receive a petition signed by 50 or more taxpayers of the library district requesting such lease arrangement
  - the board of trustees should meet to accept the petition and determine, after an investigation, that the library project is needed
- A not-for-profit corporation should be formed as the building corporation
  - Board of trustees members and employees may not serve on the building corporation
  - Building corporations must abide by the open meeting law
  - Building corporation members are often people in the community who are supportive of the library and would like to volunteer their time to assist in the financing of the project
- The working group, which may include the library director, local attorney, financial advisor, bond counsel and architect (and construction manager, if applicable), will meet to develop a proposed budget for the financing. This budget will be used to determine the term, rental payment dates and payment amount for the lease
  - It is important that all members of the working group are comfortable with the budget because this information will be used by the financial advisor to determine the maximum lease rental amount and term
- Board of trustees and building corporation approve form of lease and publish notice of hearing on lease
- Town/City Council or County Council must approve borrowing
- Board of trustees holds public hearing on lease to receive comments on whether the lease terms are fair and reasonable
  - Preliminary plans and specifications and the proposed lease must be available for inspection prior to the hearing
- The board of trustees and building corporation execute the lease
- Publish notice of execution of lease

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- Two professional appraisers prepare a joint appraisal of real estate to be sold to building corporation
  - If real estate was acquired by the library within the last three years, the amount the building corporation pays the library for the real estate may not be less than the original purchase price
- Publish notice of receipt of construction bids
- Receive and award construction bids to lowest responsible and responsive bidder
- Publish bond sale notice (if a competitive sale is used)
  - Besides local papers, also publish in the Indianapolis in The Court & Commercial Record
- Bond Sale (this may be negotiated with an underwriter if the library chooses)
- Delivery of bonds and money -- the closing
- Bond counsel delivers opinion that lease is a valid obligation and that interest on bonds is tax-exempt

#### **H. Library Lease Financing Proposed Timetable**

**\*\* If no request for application of petition & remonstrance process or referendum \*\***

Day 1	Preliminary budget meeting
Day 2	Publish and mail notice of preliminary determination hearing
Day 12	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 14	Publish and mail notice of preliminary determination to enter into lease
Day 44	End of period to request application of petition and remonstrance process
Day 45-74	Circulate Taxpayers Petition ( <i>if no application of petition and remonstrance process or referendum is filed</i> ) and submit to Auditor for certification
Day 75	Form Building Corporation
Day 76	Building Corporation meeting to approve form of lease
Day 76	Board of Trustees meeting to receive taxpayers petition and to approve form of lease and formation of Building Corporation

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Day 77	City/Town Council or County Council meeting to approve borrowing
Day 78	Publish notice of hearing on Lease
Day 111	Board of Trustees meeting to hold hearing on Lease
Day 112	Publish Notice of Execution of Lease
Day 140	Complete appraisal proceedings for sale of real estate
Day 141	Board of Trustees meeting to approve construction documents
Day 142	Publish notice of construction bids ( <i>first publication</i> )
Day 149	Publish notice of construction bids ( <i>second publication</i> )
Day 165	Publish Bond Sale Notice ( <i>first publication</i> )
Day 171	Receive construction bids
Day 172	Publish Bond Sale Notice ( <i>second publication</i> )
Day 178	Board of Trustees meeting to award construction bids and assign bids to Building Corporation
Day 178	Building Corporation meeting to approve borrowing and Trust Indenture, to deem Official Statement nearly final and accept assignment of construction bids
Day 185	Bond Sale
Day 199	Closing
Day 200	Commence Construction

#### **I. Library Lease Financing Proposed Timetable – Petition/remonstrance Process**

**\*\*If petition and remonstrance process applies and application petition is filed\*\***

Day 1	Preliminary budget meeting
Day 2	Publish and mail notice of preliminary determination hearing
Day 12	Library Board meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 14	Publish and mail notice of preliminary determination to enter into Lease
Day 43	Petition for application of petition and remonstrance process is filed with County Auditor
Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting application of petition and remonstrance process

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Day 60	Publish notice of applicability of petition and remonstrance process
Day 89	Voter Registration Office/Auditor issues petition and remonstrance forms
Day 90	Beginning of petition and remonstrance circulation
Day 120	End of petition and remonstrance period -- file petitions and remonstrances with Voter Registration Office/County Auditor
Day 135	Voter Registration Office/Auditor certifies taxpaying/voter signatures on petitions and remonstrances to Board of Trustees
Day 136	Form Building Corporation
Day 137	Board of Trustees meeting to receive Auditor's certificate with the taxpayers petition and remonstrances; if petitioners have greater number, approve form of Lease and formation of Building Corporation
Day 137	Building Corporation meeting to approve form of lease
Day 138	City/Town Council or County Council meeting to approve borrowing
Day 139	Publish notice of hearing on Lease
Day 169	Board of Trustees meeting to hold hearing on Lease; Execute Lease
Day 173	Publish Notice of Execution of Lease
Day 200	Board of Trustees meeting to approve construction documents
Day 205	Publish notice of construction bids ( <i>first publication</i> )
Day 212	Publish notice of construction bids ( <i>second publication</i> )
Day 252	Receive construction bids
Day 253	Complete appraisal proceedings for sale of real estate
Day 259	Board of Trustees meeting to award construction bids and assign bids to Building Corporation
Day 261	Building Corporation meeting to approve borrowing and Trust Indenture, to deem Official Statement nearly final and accept assignment of construction bids
Day 262	Publish bond sale notice (first publication)
Day 269	Publish bond sale notice (second publication)
Day 277	Bond Sale
Day 291	Closing
Day 292	Commence Construction

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## **J. Library Lease Financing Proposed Timetable – Referendum**

### **\*\*If referendum applies and application petition is filed\*\***

Day 1	Preliminary budget meeting
Day 2	Publish and mail notice of preliminary determination hearing
Day 12	Library Board meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 14	Publish and mail notice of preliminary determination to enter into Lease
Day 43	Petition for application of referendum is filed with County Auditor
Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting referendum
Day 65	Library files Certification of Voter Registration Office and letter requesting question be placed on ballot with County Auditor
Day 79	County Auditor certifies question to County Election Board
Day 109	County Election Board places question on ballot of next scheduled election, or if no scheduled election within next six months, special election scheduled. Special election to occur no sooner than 90 days nor later than 120 days after Auditor certifies the question
Day 200	Election
Day 207	Form Building Corporation
Day 207	Board of Trustees meeting to receive election results; if win approve form of Lease and formation of Building Corporation
Day 207	Building Corporation meeting to approve form of lease
Day 208	City/Town Council or County Council meeting to approve borrowing
Day 210	Publish notice of hearing on Lease
Day 237	Board of Trustees meeting to hold hearing on Lease; Execute Lease
Day 240	Publish Notice of Execution of Lease
Day 267	Board of Trustees meeting to approve construction documents
Day 270	Publish notice of construction bids ( <i>first publication</i> )
Day 277	Publish notice of construction bids ( <i>second publication</i> )

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Day 300	Receive construction bids
Day 300	Complete appraisal proceedings for sale of real estate
Day 307	Board of Trustees meeting to award construction bids and assign bids to Building Corporation
Day 307	Building Corporation meeting to approve borrowing and Trust Indenture, to deem Official Statement nearly final and accept assignment of construction bids
Day 307	Publish bond sale notice (first publication)
Day 314	Publish bond sale notice (second publication)
Day 321	Bond Sale
Day 335	Closing
Day 336	Commence Construction

## **K. The Role of the Building Corporation**

Under the Indiana Constitution a municipal corporation, such as a library, has a debt limitation of two percent of the net assessed valuation of property within the district. A building corporation is formed during a lease financing to assist the library in constructing and financing a project which it could not do alone because of this limitation. In this way the building corporation acts as a conduit. It is important to stress to the members of the building corporation that their role is to assist the library with its building project.

From the building corporation's perspective, there are three major phases to a building project. During the first phase, the members of the building corporation will meet and organize, approve the form of the lease and approve the plans and specifications for the building developed by the architect selected by the library. The library will also approve the plans and specifications and the form of the lease and after a notice period, hold a hearing on the lease.

The second phase is the financing part of the project. The building corporation will meet and approve the issuance of bonds to finance the project, the trust indenture and the official statement. The official statement is a document describing the building corporation, the library and the project and is used by the underwriter to market the bonds. During this phase, the bonds are sold and a closing occurs. At the closing, a transcript of the proceedings of the library and the building corporation with closing certificates is assembled. The bonds are delivered to the underwriter in exchange for payment.

The third phase of the project is the construction of the project. During this phase, the architect and construction manager, if applicable, will typically present contractor invoices for payment to the Board of Library Trustees, who will

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approve such payment. The invoices are then submitted to the building corporation for approval. The invoices will be attached to an affidavit for payment signed by two officers of the building corporation for approval. The invoices will be attached to an affidavit for payment signed by two officers of the building corporation or its designated representative and submitted to and paid by the trustee out of bond proceeds.

The building corporation will also need to approve any change orders required during construction after such change orders have been recommended by the architect and construction manager, if applicable, and approved by the Board of Library Trustees. The building corporation will need to hold annual meetings and make all necessary filings to continue its existence. Typically, the building corporation will continue to exist until the bonds are paid off, but it will not be active unless market conditions make a refunding economically feasible.

As with any other type of corporation, the members do not have individual liability for debts or obligations of the corporation. IC 23-17-13-1(d) further states that “(a) director is not liable for an action taken as a director, or failure to take such action, unless: . . . the breach or failure to perform constitutes willful misconduct or recklessness.”

During phase two, as described above, there is a possibility of liability under certain Security and Exchange Commission rules designed to prevent fraud in the sale of securities. The financial advisor, local counsel and bond counsel will assist the building corporation in avoiding such liability. The Board of Library Trustees and building corporation members can also assist in avoiding liability by reviewing the Official Statement for accuracy and completeness.

The members of the building corporation are an important part of any lease financing, and a library should appreciate the members' dedication to helping build a better library for the community. It is, however, important to emphasize to members of the building corporation that this building project is the library's project before, during and after the involvement of the building corporation. If that point is understood and accepted by members of the building corporation, there should be no opportunity for tension between the library and the building corporation.

## **L      Bond Sale: Negotiated Versus Competitive**

Bonds issued by a building corporation, in connection with a library lease financing pursuant to Indiana Code 36-1-10, may be issued using a competitive sale or by negotiating with an investment banker. Various factors should be considered in determining which type of sale is appropriate for a particular library's transaction. The financial advisor, based on his or her experience, will be able to make a recommendation; however, the ultimate decision is with the library.

With a competitive sale, a bond sale notice is published establishing a date or range of dates on which the building corporation will receive bids on its bonds. Generally, the financial advisor will supply the potential underwriters with maturity dates and amounts, either with the notice or just prior to the sale. The financial advisor will generate this schedule of maturity dates and amounts based upon estimated interest rates. The underwriter's bid will contain the interest rates for those maturity dates and amounts and the underwriter's discount. At the time of the sale, the building corporation will receive bids and, after the financial advisor reviews the bids, award the bonds to the underwriter offering the lowest interest cost. Many financial advisors believe that the building corporation will receive the best interest rates on its bonds at a competitive sale on the date of the sale because the competition will require the underwriters to offer the best interest rates possible on that day to win the bonds. Some libraries like competitive sales because it avoids the political problem of having to choose an underwriter.

With a negotiated sale, the library chooses an investment banker to underwrite the bonds. The library may use a financial advisor and an underwriter, if it desires, or it may use the investment banker as both financial advisor and underwriter. The underwriter will watch the bond market and choose a day to sell the bonds which it believes will generate the best interest rates. After the underwriter markets the bonds, the building corporation and the underwriter will execute a bond purchase contract, which locks in the interest rates.

Financial advisors may recommend to a library or a library may decide on its own, that a negotiated sale would have certain advantages in a particular transaction. The decision to use a negotiated sale is sometimes merely based on the personal preferences and prior experiences of the board of trustees involved. There are certain factors, however, that tend to suggest that a negotiated sale may be of some advantage.

If a bond issue is very large or if the interest rate markets are very volatile, it may be appropriate to negotiate the issue. With a large issue it becomes difficult for an individual underwriter to submit a bid and therefore the underwriter joins a syndicate of underwriters to submit one joint bid. If this happens, competition

may be limited or eliminated because of the small number of bids received. Financial advisors seem to vary on what size of issue is too large to sell competitively.

There are times when a library is trying to control its debt service and tax rate and therefore a very deliberate amortization schedule is desired. For example, a library may have a new industry in its district that currently is receiving property tax abatement, but in ten years will embody a large portion of the library's tax base. The financing can be structured in a way, using capital appreciation bonds, that will allow the debt service to be minimized for the first ten years of the issue until the industry comes on line. Capital appreciation bonds can only be accomplished with a negotiated sale. It is also possible, where a library is paying off other obligations (such as general obligation bonds or leases) over time, to structure the financing to achieve a relatively flat tax rate. Certain tax rate structuring will be more efficient with a negotiated sale.

Another scenario in which negotiated sales become very attractive is when the library has a story to tell. For example, a few years ago a major industry in a particular school corporation announced its closure the day before the school corporation had advertised to receive competitive bids on its bonds. The school corporation talked with an investment banker and explained the community's plans for dealing with the closure. The investment banker, on a negotiated basis, was able to sell the bonds by explaining the events to its potential customer.

Sometimes it is important for a library to sell the bonds as quickly as possible. For example, construction bids may be on the verge of expiring and the library wants to give notice to proceed as soon as possible. Often, negotiated sales can be accomplished more quickly because there is not the fifteen day advertisement requirement, as there is with a competitive sale.

The decision between a competitive bond sale and a negotiated bond sale is ultimately the library's decision. The financial advisor can provide the library with the various advantages and disadvantages for a particular transaction to assist in the decision.

## **M. New Circuit Breaker Law**

In the simplest terms, the circuit breaker tax credit enacted in the Indiana General Assembly puts a percentage cap on property taxes for certain taxpayers beginning with taxes payable in 2008. The percentage amount of the cap is based on the type of property. The percentages will decrease each year (in other words the amount of the cap will decrease) which will increase the potential loss to the governmental entities who receive tax dollars from that taxpayer until 2010 at which time the following will apply:

*This information was printed in "Financing Your Library Construction Project: A Summary of Procedures" by Ice Miller, LLP (2008- update).*

- Residential Homesteads – 1% of gross assessed valuation of the property
- Rental property and Agriculture – 2% of gross assessed valuation of the property
- Business – 3% of gross assessed valuation of the property

Even though the circuit breaker tax caps effect will not be fully felt until 2010, it is already having an affect on governmental units and school districts. The impact of the circuit breaker credit could be minimal for some libraries, but for others in connection with borrowing it could result in downgrades of credit ratings and may prevent them from being able to sell bonds.

Each taxing unit's ability to generate income will be linked to others in the taxing district. Since circuit breaker losses are shared by all taxing entities in the district, if one entity issues bonds or increases its tax rates, it impacts the ability of other entities in the district to do the same.

## **N. In Conclusion**

A library project (and related financing) does not have to be a painful experience. There will be anxious moments in every project, such as the minutes before construction bids are opened. There will also be times when it appears that the legal process takes forever to complete. But with proper planning, good and open communication and the assistance of qualified, experienced professionals, the process and the end result can be very rewarding.

Handouts in this chapter that can be found on websites:

Community Development Block Grant – <http://www.in.gov/ocra/2375.htm>

USDA Rural Development - <http://www.rurdev.usda.gov/>

USDA Rural Development-Housing Program - <http://www.rurdev.usda.gov/rhs/>